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Canada. Privy Council

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P.C. 9298

(PRIVY COUNCIL)

CANADA

[Order in Council 9298 (The Wartime Salaries Order).]

AT THE GOVERNMENT HOUSE AT OTTAWA

THURSDAY, the 27th day of NOVEMBER, 1941.

PRESENT:

HIS EXCELLENCY

THE GOVERNOR GENERAL IN COUNCIL:

WHEREAS Order in Council P.C. 8253 dated October 24, 1941, provided, among other things, for a National War Labour Board, and ordered that no employer as therein defined shall increase the basic scale of wage rates paid by him as at November 15, 1941, without the written permission of the said Board, as therein provided;

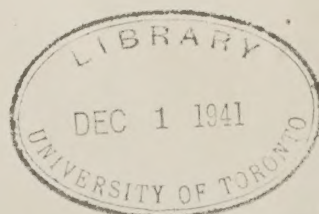
AND WHEREAS the said Order required employers subject to it to pay a cost-of-living bonus in accordance with and subject to conditions laid down in the said Order to all their employees other than those above the rank of foreman or comparable ranks;

AND WHEREAS the said Order requires amplification insofar as it applies to employees above the rank of foreman or comparable ranks;

AND WHEREAS the Minister of Finance on November 6, 1941, announced that supplementary measures would be taken to limit managerial and executive salaries;

AND WHEREAS it is desirable that a further Order be now issued limiting salaries paid to salaried officials above the rank of foreman or comparable ranks;

NOW



NOW THEREFORE His Excellency the Governor General in Council, on the recommendation of the Minister of Finance and the Minister of National Revenue and under the authority of the War Measures Act, Chapter 206, Revised Statutes of Canada, 1927, is pleased to make the following order, to be called "THE WARTIME SALARIES ORDER", and it is hereby made and established accordingly,-

- ORDER -

1. For the purpose of this Order, unless the context otherwise requires


(a) "employer" shall include any person, body corporate or politic and any association or other body, the heirs, executors, administrators, curators and other legal representatives of such person according to the law of that part of Canada to which the context extends, irrespective of the number of persons employed by him, but shall not include

(i) any department or agency of any provincial government or any municipality;

(ii) any department or agency of the Government of Canada subject to the provisions of Order in Council P.C.6702 of August 26, 1941, as amended.

(b) "salaried official" shall include every individual above the rank of foreman or comparable ranks who is an employee of an employer and shall include a director of an incorporated company; Provided that in cases where the nature of the employee's duties or responsibilities does not indicate clearly whether he is or is not above the rank of foreman or comparable ranks;

- (i) any decision or ruling of the National War Labour Board or a Regional War Labour Board as to whether or not that employee, or that particular class of employee, is or is not above the rank of foreman or comparable ranks for the purpose of the Wartime Wages and Cost of Living Bonus Order shall be taken as applying for the purpose of this Order;
 - (ii) in the absence of such relevant decision of the National, or a Regional, War Labour Board, the Minister of National Revenue shall have power to decide whether a specific employee, or particular class of employees, shall be regarded as above the rank of foreman or comparable ranks for the purpose of this Order;
 - (iii) in the absence of a decision as provided for in (i) and (ii) hereof, or pending such decision, an employee receiving a total salary of more than \$250 per month shall be deemed to be above the rank of foreman or comparable ranks;
- (c) "salary" shall include wages, salaries, bonuses, gratuities, emoluments, or other remuneration, including any share of profit or bonuses dependent upon the profits of the employer, and all other forms of "income" as defined by Section 3 of the Income War Tax Act, if such income is related to the office or position occupied by the recipient, and shall include payments to persons other than the employee in respect of services rendered by the employee, and also payments in kind, provided, however, that a salesman's commission, unless it has, in the opinion of the Minister of National Revenue, been substituted in whole or in part for another type of remuneration primarily with a view to defeating the purpose of this Order or been unreasonably increased since November 6, 1941, shall not be deemed to be a "salary".



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2. Unless otherwise permitted by paragraphs 3 and 4 hereof no employer shall increase the rate of salary paid to salaried official above the most recent salary rate established and payable before November 7, 1941, and no employer shall pay bonuses, gratuities or shares of profits to a salaried official during any year following November 6, 1941, in a total amount in excess of the total amount of such bonuses, gratuities or shares of profits paid to the said salaried official during the twelve months ending November 6, 1941, except where the salaried official has a contractual right which existed at November 6, 1941, to receive such a bonus, gratuity or share of profits defined as a fixed percentage of or in fixed ratio to his salary, the profits of the business, or the amount of sales, output or turnover of the business, in which case the employer may continue to pay the said bonus, gratuity or share of profits at the same fixed percentage or ratio as that contracted for previous to November 7, 1941. Nothing herein shall be deemed to limit the right of the Minister of National Revenue under the Income War Tax Act and The Excess Profits Tax Act 1940 to disallow any portion of any salary, bonus, gratuity or share of profits as being an unreasonable and abnormal expense of the employer.

3. (1) Notwithstanding anything contained in paragraph 2 hereof, an increase in salary rate may be permitted if the employer establishes to the satisfaction of the Minister of National Revenue that the increase is commensurate with and is occasioned by a bona fide and reasonable promotion of a specific salaried official who has been given added responsibilities and increased

duties

duties, providing that the total salary including the increase is comparable with the level of salaries for comparable positions in similar businesses and provided that if the total salary, including the increase, is

(a) less than \$7,500 per year, such increase is reported to and approved by the Minister of National Revenue on or before the assessment of the income tax return of the employer for the year in which the increase was made, or

(b) \$7,500 or over, such increase has been reported to and approved by the Minister of National Revenue before the payment of the increase.

(2) After any such increase has been approved in accordance with subsection (1) of this paragraph and a new salary level so established, the provisions of this Order shall apply to the said salary level from the effective date of that increase as if it had been established at November 6, 1941.

4. Notwithstanding Paragraph 2 hereof, an employer may, without specific approval of the Minister of National Revenue, pay to salaried officials receiving salaries less than \$3,000 per year a cost-of-living bonus not greater than an amount of bonus based, in the manner herein provided, on the cost-of-living index for the Dominion as a whole prepared by the Dominion Bureau of Statistics,

(a)

(a) If the payment of a cost-of-living bonus is commenced after the effective date of this Order, it shall not be payable in respect of any services rendered prior to February 15, 1942, and it shall reflect no more than the increase in the said index after October 1, 1941;

(b) If the salary rate payable to a salaried official on November 6, 1941, included a cost-of-living bonus determined in a manner consistent with sub-paragraphs (c) and (d) hereof, or pursuant to P.C. 7440 of December 16, 1940, there may be added to such bonus an amount based, in the manner herein provided, on the rise in the index number for October 1, 1941, above the most recent index number used to determine the then current amount of such bonus, and the total salary including such added amount of bonus shall be regarded, for the purposes of this Order, as the rate of salary in effect at November 6, 1941; and further amounts to be added to such bonus, in the manner hereinafter prescribed, shall not be based on any increase in the said index number prior to October 1, 1941, and shall not be payable in respect of any services rendered prior to February 15, 1942;

(c) The rise or fall in the index shall be measured in points, to the nearest 1/10 of one point, after the index has been adjusted to the base of 100 for August, 1939;

(d) For each rise of one point in the index, the amount of the bonus or the increase in the amount of the bonus, as the case may be, and for each fall of one point in the index the decrease in the amount of the bonus shall be:

(i)/

- (i) twenty-five cents per week for all adult male salaried officials and for all other salaried officials employed at salary rates of \$25 or more per week, and
 - (ii) one per cent of their salary rate for male salaried officials under 21 years of age, and female salaried officials, employed at salaries of less than \$25 per week.
- (e) The amount of the bonus may be re-determined every three months on the basis of the change in the cost-of-living shown by the index number for the immediately preceding month as compared with the index number on which the last previous change in the amount of the bonus was based. The amount of the bonus shall not be changed unless the cost of living has changed one whole point or more. Employers shall be guided in determining whether the bonus may be changed by the announcement of the change, if any, in the index number as given by the National War Labour Board pursuant to The Wartime Wages and Cost-of-Living Bonus Order, being P.C. 8253, dated October 24, 1941.
5. Any employer, or his officer or agent, who pays or contracts to pay a salaried official a salary in violation of any provision of this Order or contravenes or fails to observe any of the provisions hereof shall be guilty of an offence and liable on summary conviction to a fine of not less than \$100 nor more than \$5,000, for each such violation, contravention or failure.

6. The amount of any salary, found by the Minister of National Revenue to have been paid in excess of the amounts permitted by this Order or to have been paid in violation of this Order, shall be deemed to be an unreasonable and abnormal expense of the employer for all purposes including the purposes of the Income War Tax Act and The Excess Profits Tax Act 1940, and pursuant to sub-section (2) of Section 6 of the Income War Tax Act and Section 8(b) of The Excess Profits Tax Act 1940, such amount shall be disallowed as an expense of the employer in assessing the employer's profits subject to taxation under the said Acts.

7. Nothing in this Order shall be deemed to limit the discretionary power of the Minister of National Revenue as provided for in the Income War Tax Act or The Excess Profits Tax Act 1940 and, more particularly, the power of the said Minister to determine whether a salary or rate of salary, whether paid or payable prior to or subsequent to the effective date of this Order, was reasonable and normal for the business, for purposes of assessment under the said Acts.

8. No agreement providing for an increase in the rate of salary above the rate payable at November 6, 1941, shall be enforceable in respect of such increase except and to the extent that such increase is within the amount that may be permitted by paragraphs 3 or 4 hereof, and no action shall lie against any person for breach of contract for complying with the provisions of this Order or for refusing to pay any salary in excess of the amount permitted by this Order.

9. The Minister of National Revenue with the approval of the Governor in Council may make such regulations in furtherance of the provisions of this Order as may be

required

required for carrying this Order into effect and in particular, but not so as to limit the generality of the foregoing, he may provide by regulation for the determination of the persons to whom this Order is applicable with a view to ensuring that salaried officials not subject to the Wartime Wages and Cost-of-Living Bonus Order, P.C. 8253, dated October 24, 1941, will be subject to this Order.

10. This Order shall be effective on and after midnight of November 6th, 1941.

(Signed) A. D. P. HEENEY,

Clerk of the Privy Council.

